IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24748 of 2005
With
CIVIL APPLICATION No. 3134 of 2006
In SPECIAL CIVIL APPLICATION No. 24748 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 & 2 YES; 3 to 5 NO

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G.S.R.T.C. - Petitioner(s)
Versus
BHIKHUDAS VALLABHDAS DEVMURARI - Respondent(s)

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Appearance :
MS MONALI H BHATT for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR PH PATHAK for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 21/03/2006

ORAL JUDGMENT

1. This petition invoking Articles 226 and 227 of the Constitution is filed by the Gujarat State

Road Transport Corporation (GSRTC) to challenge the judgment and award dated 29.11.2004 of the Industrial Tribunal, Bhavnagar in Reference (I.T.) No.29 of 2000.

2. It was apparent and could not be gainsaid that the order of reference of the dispute to the Industrial Tribunal was made in January, 2000 after the final orders of punishment made by the GSRTC in the year 1990 and 1991. In both the orders imposing punishment upon the respondent, the incidents from which the allegations of misconduct arose had happened in the year 1987. Therefore, apparently, it was a stale dispute and demand of the respondent.

3. The learned counsel for the respondent Mr.P.H.Pathak was at a loss to explain as to how, under the provisions of section 10 of the Industrial Disputes Act, 1947, the dispute in the nature of demand to further reduce punishment could be referred to the Industrial Tribunal for adjudication, since none of the entries in the Third Schedule covered the subject-matter of punishment lesser than discharge or dismissal. Therefore, *ex facie*, the reference was belated and incompetent.

4. The charges against the respondent included dishonest misappropriation of fare collected from passengers insofar as tickets were not issued by him

as the conductor. It was after appreciation of evidence led before it that the enquiry officer had, in both the cases, recorded the findings that the respondent was found to be guilty of the charges levelled against him. However, after re-appreciating the evidence, the Industrial Tribunal has, in the impugned judgment, held the findings of the enquiry officer to be perverse in light of the defence taken by the respondent after admitting the misconduct at the time of checking. It was remarkable and fairly conceded by the learned counsel for the respondent that the Tribunal had not even referred to the most vital aspect of the distance covered by the bus before the checking, which only could have made the defence of his being in the process of issuing tickets plausible or believable. Therefore, the conclusion of perversity recorded in the impugned judgment itself appears to be perverse. Even otherwise, the Tribunal was not justified in interfering with the order of punishment which was already reduced in the orders made in the appeal preferred by the respondent even after 17 earlier opportunities given to the respondent for improving his performance.

5. In the facts and for the reasons discussed hereinabove, the judgment and award of the Industrial Tribunal, Bhavnagar in Reference (I.T.) No.29 of 2000 is set aside as perverse, illegal and without

jurisdiction. Rule is made absolute with no order as to costs.

6. The Civil Application does not survive in view of the order passed in the main petition. It accordingly stands disposed.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)